

DOCUMENT 00 52 15

AGREEMENT FORM - EJCDC STIPULATED SUM (SINGLE-PRIME CONTRACT)

THIS AGREEMENT is by and between the City of Durham (Owner), a North Carolina municipal corporation, and Vanguard Utility Service, Inc. (Contractor).

The City of Durham and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

1.1 WORK

- A. Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Upgrade of approximately 300 1.5" and 2" commercial water meters to new AMR meters. Upgrade includes removal and replacement of meter boxes to accommodate larger meter setter and appurtenances.

1.2 THE PROJECT

- A. The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Contract: MR-9 Project: 2015 Commercial Meter Replacement Project Phase III

- B. NOT IN CONTRACT

1.3 ENGINEER

- A. The Project has been designed by the City of Durham, Department of Water Management, Utility Engineering Division (Engineer), who is to act as the City of Durham's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

1.4 CONTRACT TIMES

- A. Time of the Essence
1. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- B. Days to Achieve Substantial Completion and Final Payment
1. The Work shall be substantially completed within 270 days after the date when the Contract Times commence to run (Notice to Proceed) as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within

300 days after the date when the Contract Times commence to run (Notice to Proceed).

C. Liquidated Damages

1. Contractor and the City of Durham recognize that time is of the essence of this Agreement and that the City of Durham will suffer financial loss if the Work is not completed within the times specified in Paragraph 1.4.B.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the City of Durham if the Work is not completed on time. Accordingly, instead of requiring any such proof, the City of Durham and the Contractor agree that as liquidated damages for the delay (but not as a penalty), Contractor shall pay the City of Durham four hundred dollars (\$400.00) for each day that expires after the time specified in Paragraph 1.4.B.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by the City of Durham, Contractor shall pay the City of Durham four hundred dollars (\$400.00) for each day that expires after the time specified in Paragraph 1.4.B.1 for completion and readiness for final payment until the Work is completed and ready for final payment.
2. Failure of the Contractor to commence construction within ten (10) days of the Notice to Proceed shall begin a daily penalty to the Contractor at a rate of fifty percent (50%) of the daily liquidated damages specified in Paragraph 1.4.C.1.

D. Weather Related Delays

1. There shall be no extension of Contract Times granted for delays related to adverse weather.

1.5 CONTRACT PRICE

- A. The City of Durham shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amount determined pursuant to Paragraphs 1.5.A.1 and 1.5.A.2 below:
1. NOT IN CONTRACT
  2. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work as established in section 00 41 43, Bid Form – Unit Price (attached).

1.6 PAYMENT PROCEDURES

- A. Submittal and Processing of Payments
1. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.
- B. Progress Payments; Retainage

**Appendix**

1. The City of Durham shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the [first] day of each month during performance of the Work as provided in Paragraphs 1.6.B.1.a through 1.6.B.1.e below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:
  - a. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amount as Engineer may determine or the City of Durham may withhold, including but not limited to liquidated damages, in accordance with [Paragraph 14.02 of the General Conditions].
  - b. The City of Durham will retain five (5) percent of the amount of each estimate until Work covered by the Contract is fifty percent (50%) complete. If after the Project is deemed fifty percent (50%) complete based upon the Contractor's gross Project invoices, excluding the value of materials stored on and off-site, and the Contractor provides the City and the Engineer the following:
    - 1) Written verification evidencing fifty percent (50%) completion of the Project; and,
    - 2) Written consent of the surety named in the Project performance and payment bonds agreeing that the City shall not retain any further retainage from periodic payments due to the Contractor;the City shall cease holding retainage from future periodic payments if the City finds that the Contractor is performing satisfactorily, and any nonconforming Work identified in writing by the Engineer or City (prior to the point of fifty percent (50%) Project completion) has been corrected by the Contractor and accepted by the Engineer or City, whoever provided such prior notice of nonconforming Work. If, however, the City determines the Contractor's performance is unsatisfactory, the City may reinstate the specified retainage for each subsequent periodic payment. Notwithstanding anything to the contrary, City may assess retainage after fifty percent (50%) project completion, even if the Contractor has complied with Paragraphs 1.6.B.1.b.1 and 1.6.B.1.b.2 (above) and continues to perform satisfactorily as necessary to retain two and one-half percent (2.5%) total retainage through the completion of the Project.
  - c. NOT IN CONTRACT
  - d. Notwithstanding any of the retainage provisions described herein, there shall be no retainage on periodic or final payments for Contracts having a total project cost less than \$100,000.00, and, in addition to the retainage amounts allowed to be held by the City of Durham, the City shall also retain all rights allowed under this Agreement to withhold payment to the Contractor in accordance with [Article 14 of the General Conditions] and for unsatisfactory job progress, defective or

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nonconforming construction not remedied, disputed Work, or third-party claims filed against the City of Durham or reasonable evidence that a third-party claim will be filed.

- e. Within sixty (60) days of receipt by City of (1) an Application for Payment and (2) written consent of the surety, and after City has either (1) received a certificate of Substantial Completion or (2) received beneficial occupancy or use of the Project (if applicable), the City of Durham shall pay an amount sufficient to increase total payment to Contractor to the Contract Price, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions, including up to two hundred fifty percent (250%) of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

C. Final Payment

1. Prior to issuing final payment, the Contractor will furnish to the City of Durham certification that: All Subcontractors and vendors associated with this Contract have been paid; no liens and/or lawsuits have been placed against the Contractor for this Work; and the total dollar amount has been paid to all Subcontractors, Suppliers, and others associated with this project.
2. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, the City of Durham shall pay the remainder of the Contract price as recommended by Engineer as provided in said Paragraph 14.07.

1.7 NOT IN CONTRACT

1.8 CONTRACTOR'S REPRESENTATIONS

- A. In order to induce the City of Durham to enter into this Agreement Contractor makes the following representations:
  1. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
  2. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  2. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and regulations that may affect cost, progress, and performance of the Work.
  3. Contractor has carefully studied all:
    - a. Reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in Paragraph 4.02 of the General Conditions; and
    - b. Reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in [Paragraph 4.06] of the General Conditions.

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4. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional and supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
5. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
6. Contractor is aware of the general nature of work to be performed by the City of Durham and others at the Site that relates to the Work as indicated in the Contract Documents.
7. Contractor has correlated the information known to the Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
8. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
9. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## 1.9 CONTRACT DOCUMENTS

### A. Contents

1. The Contract Documents consist of the following:
  - a. This Agreement (pages 45 to 55, inclusive).
  - b. Performance and Payment bonds (attached)
  - c. Not in Contract
  - d. General Conditions (pages 00700-1 to 00700-54, inclusive) (attached).
  - e. Technical Specifications as listed in the table of contents of the Contract and Specifications, dated August 2015 (attached).
  - f. Not in Contract
  - g. Addenda (numbers 1 to 5, inclusive) (attached).
  - h. Exhibits to this Agreement (enumerated as follows):
    - 1) Contractor's Bid
    - 2) Contract Certificates of Liability/Insurance
    - 3) Not in Contract
    - 4) Non-Collusion Statement by Contractor
    - 5) Documentation submitted by Contractor prior to Notice of Award

## Appendix

- i. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    - 1) Notice to Proceed
    - 2) Work Change Directives.
    - 3) Change Order(s).
- B. The documents listed in Paragraph 1.9.A.1 are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in Paragraph 1.9.A.1.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.
- E. Coordination of General Conditions, Supplementary Conditions, Agreement, and Technical Specifications
  - 1. All components of the Contract Documents are essential elements of the Contract between the Owner and Contractor, and notwithstanding the requirements of Paragraph 3.03 of the General Conditions, in case of a conflict or contradiction among the General Conditions (including Supplementary Conditions), Agreement, and Technical Specifications, the following shall be the order of controlling authority as among these documents: The Technical Specifications shall control over the Agreement and the Agreement shall control over the General Conditions (including Supplementary Conditions).

#### 1.10 MISCELLANEOUS

- A. Terms
  - 1. Terms used in this Agreement will have the meanings stated in the General Conditions.
- B. Assignment of Contract
  - 1. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- C. Successors and Assigns
  - 1. The City of Durham and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- D. Severability

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1. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the City of Durham and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- E. Notices and Communications
1. All notices and other communications required or permitted by Contract shall be in writing and shall be given by personal delivery, fax, or certified United States mail (return receipt requested) addressed/faxed as follows:  
  
To the City of Durham (Owner):  
Attention: Don Greeley, PE, PLS  
City of Durham  
Department of Water Management  
101 City Hall Plaza  
Durham, North Carolina 27701  
Fax: (919) 560-4479  
  
To the Contractor:  
Attention:  
Firm Name:  
Street Address:  
City, State, Zip Code  
Fax Number
  2. A change of address, fax number, or person to receive notices or communications may be made by either party by notice given to the other party. Any notices or communications under Contract shall be deemed given at the time of actual delivery, if it is personally delivered or faxed. If the notices or communications are sent by United States mail, it shall be deemed given upon the third calendar day following the day on which the notices or communications were postmarked, or upon actual delivery, whichever first occurs.
- F. NOT IN CONTRACT
- G. Technical Data and Other Work
1. Subsurface and Physical Conditions
    - a. No reports of explorations or tests of subsurface conditions at or contiguous to the Site are known to the City of Durham or Engineer.
  2. Hazardous Environmental Condition
    - a. No reports or drawings related to Hazardous Environmental Condition are known to the City of Durham or Engineer.
  3. Other Work

## **Appendix**

- a. The City of Durham and Engineer are unaware of any other work on the Site at the time of Notice to Proceed.

#### H. Contractor's Liability Insurance

The Contractor shall meet the following insurance requirements for the duration of the project:

**Commercial General Liability**, covering:

- Premises/operations
- Products/completed operations (two years minimum, from project completion)
- Broad form property damage
- Contractual liability
- Independent contractors, if any are used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- Combined single limit not less than \$2,000,000 per occurrence, with an annual aggregate on not less than \$4,000,000.

**Commercial Auto Liability**, covering:

- Symbol 1, all vehicles
- Combined single limit of \$2,000,000
- City of Durham must be named additional insured

**Workers' Compensation Insurance**, covering:

- Statutory benefits;
- Covering employees; covering owners partners, officers, and relatives (who work on this contract) (this must be stated on the certificate)
- Employers' liability, \$1,000,000
- Waiver of subrogation in favor of the City of Durham

**Insurance shall be provided by:**

- Companies authorized to do business in the State of North Carolina
- Companies with Best rating of A-, VII or better.

**Insurance shall be evidenced by a certificate:**

- Providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- Certificates shall be addressed to:  
City of Durham, North Carolina  
Attention: Brian Sessoms, Department of Water Management, 101 City Hall Plaza, Durham, NC 27701

#### I. E-Verify Compliance

1. E-Verify Requirements. (a) If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) the contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor's subcontractors," and "comply" as used in this subsection (a) shall have the



meanings intended by NCGS 143-129(j); and (iii) the City is relying on this subsection (a) in entering into this contract. (b) If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

NON-COLLUSION STATEMENT BY CONTRACTOR

The City of Durham prohibits collusion, which is defined as a secret agreement for a deceitful or fraudulent purpose.

I, ....., affirm that I have not engaged in collusion with any City employee(s), other person, corporations, or firms relating to this Bid, proposals, or quotations. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

.....  
CONTRACTOR

IN WITNESS WHEREOF, the City of Durham and Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date").

Attest:

CITY OF DURHAM

\_\_\_\_\_

\_\_\_\_\_

Preaudit Certificate, if applicable \_\_\_\_\_

By: VANGAURD UTILITY SERVICE, INC.

By: \_\_\_\_\_(Seal)

Title of Officer \_\_\_\_\_

(

County of \_\_\_\_\_

I, a notary public in and for the aforesaid county and state, certify that  
\_\_\_\_\_ personally appeared before me this  
day and stated that he or she is

**(~~strike through the inapplicable:~~)** chairperson/ president/ chief executive officer/ vice-president/  
assistant vice-president/ treasurer/ chief financial officer of

\_\_\_\_\_, Inc a corporation, and that by authority duly given and as the act of the  
corporation, he or she signed the foregoing contract or agreement with the City of Durham and the  
corporate seal was affixed thereto. This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My commission expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public